

§ 105-151.29. (Repealed for qualifying expenses occurring on or after January 1, 2015)

Credit for qualifying expenses of a production company.

(a) Definitions. – The following definitions apply in this section:

- (1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars (\$1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.
- (2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production in which sporting events are presented through archived historical footage or similar footage taken at least 30 days before it is used.
- (3) Production company. – Defined in G.S. 105-164.3.
- (4) Qualifying expenses. – The sum of the following amounts spent in this State by a production company in connection with a production, less the amount paid in excess of one million dollars (\$1,000,000) to a highly compensated individual:
 - a. Goods and services leased or purchased. For goods with a purchase price of twenty-five thousand dollars (\$25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.
 - b. Compensation and wages on which withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter.
 - c. The cost of production-related insurance coverage obtained on the production. Expenses for insurance coverage purchased from a related member are not qualifying expenses.
 - d. Employee fringe contributions, including health, pension, and welfare contributions.
 - e. Per diems, stipends, and living allowances paid for work being performed in this State.
- (5) Related member. – Defined in G.S. 105-130.7A.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars (\$250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the production company's qualifying expenses. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

(b1) Repealed by Session Laws 2009-529, s. 2, effective January 1, 2011.

(c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for a credit provided in this section does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming a credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, a

credit allowed under this section does not affect the entity's payment of tax on behalf of its owners.

(d) Return. – A taxpayer may claim a credit allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, a description of the production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed. The qualifying expenses are subject to audit by the Secretary before the credit is allowed.

(e) Credit Refundable. – If a credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(f) Limitations. – The amount of credit allowed under this section with respect to a production that is a feature film may not exceed twenty million dollars (\$20,000,000). No credit is allowed under this section for any production that satisfies one of the following conditions:

- (1) It is political advertising.
- (2) It is a television production of a news program or live sporting event.
- (3) It contains material that is obscene, as defined in G.S. 14-190.1.
- (4) It is a radio production.

(g) Substantiation. – A taxpayer allowed a credit under this section must maintain and make available for inspection any information or records required by the Secretary of Revenue. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Secretary may consult with the North Carolina Film Office of the Department of Commerce and the regional film commissions in order to determine the amount of qualifying expenses.

(h) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

- (1) The location of sites used in a production for which a credit was taken.
- (2) The qualifying expenses for which a credit was taken, classified by whether the expenses were for goods, services, or compensation paid by the production company.
- (3) The number of people employed in the State with respect to credits taken.
- (4) The total cost to the General Fund of the credits taken.

(i) Repealed by Session Laws 2006-220, s. 4, effective for taxable years beginning on and after January 1, 2007.

(j) NC Film Office. – To claim a credit under this section, a taxpayer must notify the Department of Commerce of the taxpayer's intent to claim the production tax credit. The notification must include the title of the production, the name of the production company, a financial contact for the production company, the proposed dates on which the production company plans to begin filming the production, and any other information required by the Department. For productions that have production credits, a taxpayer claiming a credit under this section must acknowledge in the production credits both the North Carolina Film Office and the regional film office responsible for the geographic area in which the filming of the production occurred.

(k) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, 2015. (2005-276, s. 39.1(b); 2005-345, ss. 47(c), 47(d); 2006-162, s. 4(b); 2006-220, s. 4; 2007-527, s. 24; 2008-107, s. 28.24(b); 2009-445, s. 8(b); 2009-529, s. 2; 2010-147, s. 2.2; 2010-166, s. 1.16; 2012-194, s. 79.10(b); 2015-241, s. 15.4(g).)